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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/680,655	10/06/2003	Daniel Jonathan Auerbach	HSJ920030190US1	5794
7590	01/19/2006			EXAMINER
John L. Rogitz Rogitz & Associates Suite 3120 750 B Street San Diego, CA 92101				PEUGH, BRIAN R
			ART UNIT	PAPER NUMBER
			2187	
			DATE MAILED: 01/19/2006	

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/680,655	AUERBACH ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Brian R. Peugh	2187	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### **Status**

1) Responsive to communication(s) filed on 06 October 2003.

2a) This action is FINAL.                            2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### **Disposition of Claims**

4) Claim(s) 1-21 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) 1-5 and 7 is/are allowed.

6) Claim(s) 6,8,15,16 and 19-21 is/are rejected.

7) Claim(s) 9-14,17,18 is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### **Application Papers**

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### **Priority under 35 U.S.C. § 119**

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### **Attachment(s)**

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
 Paper No(s)/Mail Date 10/6/03.

4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_.

5) Notice of Informal Patent Application (PTO-152)

6) Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Information Disclosure Statement***

The information disclosure statement (IDS) submitted on October 6, 2003 is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner.

### ***Claim Objections***

Claims 9 and 21 objected to because of the following informalities:

Regarding claim 9, line 1: Dependent claim 9 recites "The system of Claim 9". The Examiner believes that the claimed limitation was meant to indicate dependency upon claim 8, and the Examiner will interpret the claim as such. The Examiner suggests amending the claim by replacing "9" with --8—.

Claim 21 recites the limitation "means for outputting a graphical representation of the data structure". The Examiner has been unable to locate the "means" for outputting the graphical representation in Applicant's Specification, and encourages the Applicant to comment upon this claim limitation.

Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

Claims 6 and 19-21 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 6 recites the limitation "the ordered data structure" in line 2. There is insufficient antecedent basis for this limitation in the claim. Parent claim 1 did not previously recite an "ordered data structure", although dependent claim 2 recites "an ordered data structure".

Claim 19 recites the limitation "the plural access times for that target sector" in line 2. There is insufficient antecedent basis for this limitation in the claim. Plural access times for a target sector had not been previously recited.

Claim 21 recites the limitation "the data structure" in line 2. There is insufficient antecedent basis for this limitation in the claim. A data structure had not been previously recited.

Claim 20 is rejected as being dependent upon a previously rejected claim.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the

applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 8, 15, and 16 are rejected under 35 U.S.C. 102(e) as being anticipated by Mobley et al. (US# 6,848,019).

Regarding claim 8, Mobley et al. teaches a system for providing a measure of the performance of a hard disk drive (HDD), comprising: at least one digital processing apparatus [col. 4, lines 4-8] executing logic embodying method acts comprising: executing accesses from at least one reference sector to plural target sectors arranged in tracks on the HDD; for each access, recording an access time; ordering the access times in a data structure; and using at least some access times in the data structure to output a measure of performance of the HDD [the measure of performance relates to the data transfer rate seen as commands are performed; col. 5, line 56 – col. 6, line 1; col. 8, lines 31-45]

Regarding claim 15, Mobley et al. teaches a system for providing a measure of the performance of a hard disk drive (HDD), comprising: at least one digital processing apparatus including [col. 4, lines 4-8]: means for executing at least one access from a single reference sector to plural target sectors on the HDD; means for determining times associated with at least some' respective accesses [col. 5, line 56 – col. 6, line 1]; and means for using the times to determine at least one shortest access time [based on latency; col. 8, lines 35-43] and at least one probability of achieving the shortest access time [col. 8, lines 43-53].

Regarding claim 16, Mobley et al. teaches wherein the digital processing apparatus further comprises means for ordering the times in a data structure [command queue is sorted via seek time; col. 6, lines 25-39].

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mobley et al. (US# 6,848,019) as applied to claims 8, 15, and 16 above, and further in view of Singer (US# 2002/0041460). This claim has been rejected in light of the associated claim objection and 35 U.S.C., 112 second paragraph rejection as noted above.

Mobley et al. fails to teach “means for outputting a graphical representation of the data structure”. Singer teaches the “means for outputting a graphical representation of the data structure” [para 0015]. Therefore it would have been obvious to one of ordinary skill in the art having the teachings of Mobley et al. and Singer before him at the time the invention was made to modify the teaching of Mobley et al. to include the graphical means of Singer, because then control operation may be given to a user that

requires low seek times without the need for a specific acoustical level, as taught by Singer [para 0015].

***Allowable Subject Matter***

Claims 1-5 and 7 are allowed over the prior art of record.

Claim 6 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Claims 9-14, 17, and 18 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

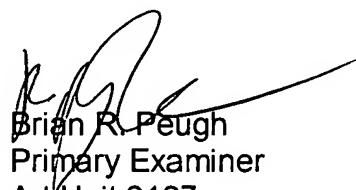
The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The prior art corresponds to related hard drive seek time systems.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian R. Peugh whose telephone number is (571) 272-4199. The examiner can normally be reached on Monday-Thursday from 7:00am to 4:30pm. The examiner can also be reached on alternate Friday's from 7:00am to 4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Donald Sparks, can be reached on (571) 272-4201. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 571-272-2100.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Brian R. Peugh  
Primary Examiner  
Art Unit 2187  
January 18, 2006